

#400

GAM

(1)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LUCINO SALDANA-VARGAS

Plaintiff

v.

LF LAMBERT SPAWN CO., INC.

Defendant

CIVIL ACTION NO.

19 2994

JURY TRIAL DEMANDED

FILED

JUL 10 2019

KATE BARKMAN, Clerk
By Dep. Clerk

COMPLAINT

Plaintiff, Lucino Saldana-Vargas, by and through his undersigned counsel, the Gallagher Law Group, PC, files this Complaint against defendant, LF Lambert Spawn Co., Inc. ("Lambert Spawn"), and in support thereof avers as follows:

PARTIES

1. Plaintiff, Lucino Saldana-Vargas, is an adult individual and resident of the Commonwealth of Pennsylvania who currently resides at 240 Charles Street, Coatesville, PA. 19320.

2. As pertinent hereto, plaintiff was employed by Lambert Spawn and worked a "full-time" schedule during the three (3) years preceding the filing of this action, with a period of disability-related absence occurring in early 2019.

3. Plaintiff's last date of employment with Lambert Spawn was on or about May 31, 2019.

4. Defendant, Lambert Spawn is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, whose principal place of business is located at 1507 Valley Road, Coatesville, PA. 19320.

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5. According to Lambert Spawn's website:

Founded in 1919, L.F. Spawn Co, is the oldest independent spawn manufacturer in North America. Beginning with Louis Lambert's dream to make pure culture spawn, this revolutionary discovery forever changed the mushroom industry and laid the course for the next ninety years...

Lambert Spawn's production capability is currently distributed over three different campuses. Our spawn manufacturing is housed in two facilities located in Coatesville, PA. Our Supplements are produced in our Ohio facility.

JURISDICTION AND VENUE

6. Plaintiff herein asserts claims for overtime pursuant to Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* ("FLSA") and Pennsylvania's Minimum Wage Act, 43 P.S. §§336.1, *et seq.* ("PMWA"), along with a claim for unpaid wages pursuant to Pennsylvania's Wage Payment and Collection Law, 43 Pa.C.S.A. §260.1 *et seq.* ("WPCL").

7. The amount in controversy in this matter is not in excess of the arbitration limits of this Court.

8. The Court has jurisdiction over this matter by its authority to hear cases arising under the laws of the United States, pursuant to 28 U.S.C. §1331. This civil action arises under the Constitution and laws of the United States. Plaintiff is alleging a violation of his rights under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* ("FLSA").

9. The Court has jurisdiction over the state law claims set forth herein pursuant to 28 U.S.C. §1367(a), as such claims are closely related to the claims in the action within the Court's original jurisdiction.

10. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1391(b), as defendant is located within this jurisdiction, regularly conducts business in this district and a substantial part of the events giving rise to the claims occurred in the Eastern District of Pennsylvania.

FACTS

A. Plaintiff's Job Duties

11. At all times relevant hereto, plaintiff was employed at Lambert Spawn's Coatesville facility, in which he performed menial labor consisting largely of cooking mushrooms.
12. Plaintiff was at all times paid on an hourly basis.
13. Plaintiff was at all times required to punch a time clock, and did so each day.
14. At no time did plaintiff supervise or direct the activities of any other employee of Lambert Spawn.
15. At no time was plaintiff involved in decisions relating to the hiring, discipline or supervision of any employee of Lambert Spawn.
16. Stated further, plaintiff did *not*:
 - a. supervise two (2) or more Lambert Spawn employees;
 - b. hire/discipline/fire employees of Lambert Spawn employees;
 - c. participate in decisions concerning the hiring, disciplining or firing of Lambert Spawn employees;
 - d. participate in decisions concerning the purchase or sale of Lambert Spawn inventory, merchandise, products, inventory and/or equipment;
 - e. have any involvement in preparing or reviewing financial information concerning the operations of Lambert Spawn, or any component thereof; or,
 - f. have any involvement in negotiating or administering contracts between Lambert Spawn and its clients, customers and/or contractors.

B. Plaintiff Entitled to Overtime but not Paid Overtime Despite Regularly Working More than 40 Hours per Week

17. Plaintiff averaged approximately 68 hours of work each week during the relevant years of active employment preceding his separation from the employment of Lambert Spawn.

18. Although plaintiff was paid his “straight wage” of approximately \$17 per hour for most if not all of the hours that he worked, he was at no time paid any overtime rate (i.e. 1.5 times his hourly rate of pay) for any overtime hours that he worked.

19. While employed by Lambert Spawn, the plaintiff provided labor and other services that qualified him for overtime under both the FLSA and Pennsylvania’s Minimum Wage Act, 43 P.S. §§336.1, *et seq.* (“PMWA”).

20. Lambert Spawn knowingly and intentionally failed to pay overtime to plaintiff, in violation of said statutes.

21. Lambert Spawn made repeated and continual decisions, which were willful and wanton in nature, to refuse payment of overtime wages lawfully earned by plaintiff.

22. Plaintiff seeks damages in accordance with FLSA and PMWA for the overtime payments that defendant willfully failed and refused to pay to him.

COUNT I – PLAINTIFF v. DEFENDANT
Violation of the Fair Labor Standards Act

23. Plaintiff hereby incorporates by reference all other paragraphs of his Complaint as though more fully set forth at length herein.

24. Plaintiff was at all material times a non-exempt employee who was entitled to overtime payments during the entire period that he was employed by defendant.

25. Plaintiff routinely worked in excess of 40 hours during any given work week while he was employed by defendant.

26. Plaintiff did not receive overtime payment for such overtime hours.

27. Defendant knew or should have known that it was required to pay overtime to plaintiff.

28. Defendant willfully, wantonly and intentionally deceived plaintiff by refusing to pay plaintiff overtime compensation, even though at all times material hereto defendant knew that plaintiff neither managed nor superintended a department or division, nor any of its employees.

29. Plaintiff is entitled to receive payment equal to one and one-half his hourly rate for every hour worked beyond forty (40) hours per week, along with attorney's fees, costs, liquidated damages and all other relief appropriate under the FLSA.

WHEREFORE, plaintiff, Lucino Saldana-Vargas, hereby demands judgment in his favor and against defendant, LF Lambert Spawn Co., Inc., in a sufficient amount to fully compensate him for his losses, along with attorney fees, liquidated damages, costs and such other relief as the Court deems just and appropriate.

COUNT II – PLAINTIFF v. DEFENDANT
Violation of the Pennsylvania Minimum Wage Act

30. Plaintiff hereby incorporates by reference all other paragraphs of his Complaint as though more fully set forth at length herein.

31. Plaintiff was at all material times a non-exempt employee who was entitled to overtime payments during the entire period that he was employed by defendant.

32. Plaintiff routinely worked in excess of 40 hours during any given work week while he was employed by defendant.

33. Plaintiff did not receive overtime payment for such overtime hours.

34. Defendant knew or should have known that it was required to pay overtime to plaintiff.

35. Defendant willfully, wantonly and intentionally deceived plaintiff by refusing to pay plaintiff overtime compensation, even though at all times material hereto defendant knew

that plaintiff neither managed nor superintended a department or division, nor any of its employees.

36. Plaintiff is entitled to receive payment equal to one and one-half his hourly rate for every hour worked beyond forty (40) hours per week, along with attorney's fees, costs and all other relief appropriate under the PMWA.

WHEREFORE, plaintiff, Lucino Saldana-Vargas, hereby demands judgment in his favor and against defendant, LF Lambert Spawn Co., Inc., in a sufficient amount to fully compensate him for his losses, along with attorney fees, costs and such other relief as the Court deems just and appropriate pursuant to PMWA.

WHEREFORE, plaintiff, Lucino Saldana-Vargas, hereby demands judgment in his favor and against defendant, LF Lambert Spawn Co., Inc., in a sufficient amount to fully compensate him for his losses, along with attorney fees, liquidated damages, costs and such other relief as the Court deems just and appropriate.

COUNT III – PLAINTIFF v. DEFENDANT
Violation of the Pennsylvania Wage Payment and Collection Law

37. Plaintiff hereby incorporates by reference all other paragraphs of his Complaint as though more fully set forth at length herein.

38. Plaintiff was at all material times a non-exempt employee who was entitled to overtime payments during the entire period that he was employed by defendant.

39. Plaintiff routinely worked in excess of 40 hours during any given work week while he was employed by defendant.

40. Plaintiff did not receive overtime payment for such overtime hours.

41. Defendant's failure to pay plaintiff to which he was entitled was without justification or good reason.

42. Defendant knew or should have known that it was required to pay overtime to plaintiff.

43. Defendant willfully, wantonly and intentionally deceived plaintiff by refusing to pay plaintiff overtime compensation, even though at all times material hereto defendant knew that plaintiff neither managed nor superintended a department or division, nor any of its employees.

44. Plaintiff is entitled to receive payment equal to one and one-half his hourly rate for every hour worked beyond forty (40) hours per week, along with attorney's fees, costs, liquidated damages and all other relief appropriate under the WPCL.

WHEREFORE, plaintiff, Lucino Saldana-Vargas, hereby demands judgment in his favor and against defendant, LF Lambert Spawn Co., Inc., in a sufficient amount to fully compensate him for his losses, along with attorney fees, liquidated damages, costs and such other relief as the Court deems just and appropriate.

July 6, 2019

GALLAGHER LAW GROUP, PC

By: 

John A. Gallagher, Esquire
Counsel for Plaintiff
Attorney I.D. No. 61914
5 Great Valley Parkway, Suite 210
Malvern, PA 19355
(610) 647-5027
(610) 889-9726 (fax)
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JS 44 (Rev 06/17)

GAM CIVIL COVER SHEET

19-cv-2994

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS

Lucino Saldana-Vargas

(b) County of Residence of First Listed Plaintiff Chester
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

John A. Gallagher, Esquire

5 Great Valley Parkway, Ste 210, Malvern, PA 19355

DEFENDANTS

2. LF Lambert Spawn Co., Inc.

County of Residence of First Listed Defendant Chester
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question U.S. Government Not a Party
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

29 U.S.C. §§201, et seq

Brief description of cause
Overtime Claim

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.C.P.

DEMAND \$
145,000.00

CHECK YES only if demanded in complaint
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

JUL 10 2019

DATE

07/06/2019

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IF

JUDGE

MAG JUDGE

GAMUNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

19

2994

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 240 Charles Street, Coatesville, PA. 19320

Address of Defendant: 1507 Valley Road, Coatesville, PA. 19320

Place of Accident, Incident or Transaction: Coatesville, PA

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | | |
|---|---|------------------------------|--|
| 1 | Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2 | Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3 | Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4 | Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.DATE 07/06/2019

61914

Attorney at Law / Pro Se Plaintiff

Attorney ID # (if applicable)

CIVIL: (Place a ✓ in one category only)**A. Federal Question Cases:**

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☒ 11. All other Federal Question Cases
(Please specify) FLSA (Overtime)

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify) _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability -- Asbestos
- ☐ 9. All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, John A. Gallagher, counsel of record or pro se plaintiff, do hereby certify

- ☐ Pursuant to Local Civil Rule 53.2, § 3(e)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:
- ☐ Relief other than monetary damages is sought

DATE 07/06/2019

61914

Attorney at Law / Pro Se Plaintiff

Attorney ID # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38

GAM**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA****CASE MANAGEMENT TRACK DESIGNATION FORM**

Lucino Saldana-Vargas

v.

LF Lambert Spawn Co., Inc.

CIVIL ACTION

19

2994

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

July 6, 2019

John A. Gallagher, Esq.

Plaintiff

Date

Attorney-at-law

Attorney for

610-647-5027

610-889-9726

jag@johnagallagher.com

Telephone

FAX Number

E-Mail Address

(Civ. 660) 10/02

JUL 10 2019